

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

LINDA WEST and VICKI WATSON as)
surviving natural children,)
next of kin, and wrongful)
death beneficiaries of ETHEL)
WALDRUP,)
)
Plaintiffs,)
)
vs.) No. 2:10-cv-02064-JPM-dkv
)
AMERICARE LONG TERM SPECIALTY)
HOSPITAL, LLC d/b/a AMERICARE)
HEALTH AND REHABILITATION)
CENTER,)
)
Defendant.)

**ORDER GRANTING DEFENDANT'S [29] MOTION TO STAY DISCOVERY AND
ORDER DENYING AS MOOT PLAINTIFFS' [35] MOTION TO STRIKE
DEFENDANT'S REPLY**

Before the Court is Defendant Americare Long Term Specialty Hospital, LLC d/b/a Americare Health and Rehabilitation Center's ("Americare" or "Defendant") Motion to Stay Discovery pending the Court's ruling on its Motion to Dismiss (Docket Entry ("D.E.") 29), filed July 19, 2010. Plaintiffs responded in opposition on July 20, 2010. (D.E. 31.) Defendant filed a reply on July 22, 2010. (D.E. 34.) Plaintiffs filed a Motion to Strike Defendant's Reply (D.E. 35), on July 23, 2010.

Plaintiffs' response in opposition to Defendant's motion states that Michael Hampton received notice and was subpoenaed for a deposition "on July 27, 2010." (Pls.' Resp. in Opp'n to Def.'s Mot. to Stay ("Pls.' Resp.") (D.E. 31) ¶ 1.) The parties not only dispute whether additional time must be granted, but also what day the deposition is currently scheduled.

The record shows that on July 23, 2010, Plaintiffs filed Notice to Take Video Deposition *Duces Tecum* of Michael Hampton on "July 28, 2010 at 10:00 a.m." (Pls.' Resp. Ex. 2 ("Deposition Notice") (D.E. 31-2) at 1.) The subpoena issued that same day, however, has a handwritten notation crossing out the typed date, and replacing it with a different date. (Pls.' Resp. Ex. 1 ("Subpoena") (D.E. 31-1) at 1.) What is typed as "07/28/2010 10:00 am" is marked by hand to read "07/27/2010 at 10:00 am." (*Id.*) Defendant's counsel contends that he cannot be available on July 27, 2010 and Plaintiffs' counsel contends that he is unavailable on July 28, 2010.

Because the Court cannot determine which date is accurate, the scope of the contested deposition and requested document production is broad, and in light of the fact that the Court has recently ruled on Defendant's Motion to Dismiss, the Court GRANTS Defendant's Motion to Stay Michael Hampton's July 27, 2010 or July 28, 2010 deposition. If Plaintiffs wish to reschedule this deposition, Defendant must provide available

dates suitable to both parties between the entry of this order and August 11, 2010. To accommodate this extension, the Court modifies the Report of Discovery Plan and Joint Scheduling Order (D.E. 9), entered April 16, 2010. The Court extends the deadline for completing "all written discovery and depositions of fact witnesses" to August 27, 2010.¹ This extension does not affect any other deadlines set forth and established in the Joint Scheduling Order. Plaintiffs' Motion to Strike Defendant's Reply is DENIED AS MOOT.

SO ORDERED this 26th day of July, 2010.

/s/ JON PHIPPS McCALLA

CHIEF UNITED STATES DISTRICT JUDGE

¹ The current deadline for completing "all written discovery and depositions of fact witnesses" is August 2, 2010. (D.E. 9 at 2.)